

19 December 2003

Paper No. CB(2)800/03-04(01)

Mrs Joanne Mak
Clerk to Bills Committee on
United Nations (Anti-Terrorism Measures) (Amendment) Bill 2003
Legislative Council Building
8 Jackson Road
Hong Kong

Dear Mrs Mak

United Nations (Anti Terrorism Measures) (Amendment) Bill 2003

We refer to your letter dated 8 December 2003 and LegCo Paper CB(2)454/0304(04) setting out Security Bureau's response to our submission to LegCo dated 6 November 2003.

The Security Bureau has responded to all the points in our submission relating to various provisions in the Bill. We have studied the response very carefully and would like to seek further clarification on some of the provisions as set out in the attachment to this letter. We also note that the Security Bureau will study the additional issue we have raised regarding the need to protect banks from liability for delays resulting from compliance with Sections 7 and 8 of the Ordinance.

Pending receipt of clarification on the outstanding issues in the attachment and a substantive response on the issue of exemption of liability, we have no further comments to raise to the Bills Committee at its meeting scheduled for 10 January 2004. Nevertheless, we thank the Bills Committee Chairman for inviting us to the meeting.

Yours sincerely

Rona Morgan
Secretary

Enc.

Bills Committee on United Nations (Anti-Terrorism Measures) (Amendment) Bill 2003 – HKAB comments on Security Bureau’s responses contained in LegCo Paper No. CB(2)454/03-04(04)

1. Clause 7 (Section 11B) - We take the point that changing the conjunction from "and" to "or" would remove an element of mens rea from the offence which is contrary to normal principles of criminal law. However, the offence as drafted could only be made out if a person places or detonates an explosive in a prescribed object and has the intention to cause destruction of all or part of the prescribed object and it could be reasonably concluded that destruction would be likely to result in major economic loss. We query whether the third ingredient of the offence is necessary. Ought it not to be sufficient that the person places or detonates the explosive device in a prescribed object and has the intention of causing destruction of all or part of the prescribed object. The inclusion of a further element of the offence will make it more difficult to make out.
2. Clause 8 (Section 12(6)(a)) – Our previous comment was that the information should only be used for the purpose of investigation of terrorist property or terrorist offences. The Personal Data (Privacy) Ordinance contains exemptions for personal data held for the purpose of preventing or detecting crime, apprehending, prosecuting or detaining offenders, assessing or collecting taxes, preventing or remedying unlawful conduct or dishonesty, preventing financial loss or exercising a statutory function (Section 58(1) of the Personal Data (Privacy) Ordinance). The response has not fully addressed the comment.
3. Clause 8 (Section 12(7)) - Under the common law, there is no restriction on investigation authorities disclosing information. The inclusion of Clause 12(7) would have the effect of allowing general disclosure, negating the intention of Section 12(6) which is that information disclosed may only be disclosed in accordance with the section and not otherwise.
4. Clause 9 (Sections 12A(3)(c)(i) and (ii)) – We agree that the order authorising an authorised officer to require persons to answer questions or produce material will only be made if certain objective grounds are met. The order itself, however, as described in Section 12A(3)(c)(i) and (ii) may authorise the authorised officer to adopt a subjective approach. To be consistent with Section 12A(4), we believe that the authorised officer should follow an objective approach.
5. Clause 9 (Sections 12A(5) and (6)) – See our comments in point 4 above.
6. Clause 9 (Section 12D(2)(a)) - See our comments in point 2 above.
7. Clause 9 (Section 12D(2)(b)) – See our comments in point 2 above.

8. Clause 9 (Section 12D(3)) - See our comments in point 3 above.
9. Clause 19 (Schedule 2) - See our comments in point 4 above.
10. Schedule (Consequential Amendments) - See our comments in points 2 and 3 above.